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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8102 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRITBHAI RATILAL SHAH

Versus

GUNVATIBEN MANUBHAI RANA

Appearance:

1. Special Civil Application No. 8102 of 2004

MR HARSHAD K PATEL for Petitioner No. 1

MRS SANGEETA N PAHWA for Respondent No. 1

MS NANDINI JOSHI, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/12/2004

ORAL JUDGEMENT

Rule. Learned advocate Mrs.Sangeeta Pahva waives service of notice of rule on behalf of respondent No.1 and Ms.Nandini Joshi, learned AGP waives service of rule

on behalf of respondent No.2. At the joint request the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the petition, the petitioner has challenged the order dated 9.3.04 by which the application of the petitioner to set aside the alien recovery notice dated 15.7.03 was rejected. It is not in dispute that the award was passed against one Debonair Pharmaceuticals which was allowed in favour of the respondent-workman. It is suggested that the wife of the petitioner is the proprietor of Debonair Pharmaceuticals and that therefore, the recovery cannot be sought against the petitioner. It is not in dispute that by the order dated 6.8.2001, the Labour Court, Ahmedabad ordered recovery of an amount of Rs.67,718.45 ps. and ordered payment of cost of Rs.3,000/-. This recovery was ordered against Debonair Pharmaceuticals. It is not in dispute that the petitioner holds the power of attorney on behalf of his wife to act for and on behalf of Debonair Pharmaceuticals. Perhaps, on this count, notice dated 15.7.03 came to be issued by the Alien Recovery Mamlatdar.

3. As mentioned earlier, there is hardly any dispute about the fact that the respondent No.1 workman had succeeded in the reference proceedings and that on the basis of the award passed by the Labour Court, recovery application of the workman was also allowed and the employer i.e. Debonair Pharmaceuticals was ordered to pay the said sum of Rs.67,718.45 ps. with cost of Rs.3,000/-. The sole ground on which the notice is challenged is that the petitioner herein is not personally responsible to satisfy the order for recovery. However technical, the ground has to be accepted and since the petitioner himself is not the proprietor of Debonair Pharmaceuticals and it is his wife who is at least on paper stated to be the proprietor and though the petitioner holds the power of attorney on behalf his wife, the recovery could not have been effected personally against the petitioner the notice dated 15.7.03 is required to be set aside. Therefore, while without disturbing the order of recovery dated 6.8.2001, the impugned notice dated 15.7.03 is set aside solely on the ground that the recovery is sought to be effected against the petitioner instead of his wife who is the sole proprietor of Debonair Pharmaceuticals. It is expected that the respondent No.2 shall take correct steps and ensure recovery from the proper person so as to see that the amount ordered to be recovered by the competent court is paid over to respondent No.1 workman

without any further delay.

4. In the result, the petition is allowed to the extent stated above with liberty to the respondent No.1 to approach in case of difficulty. Rule is made absolute accordingly. Under the orders of this Court, the petitioner has deposited an amount of Rs.15,000/- before the Registry. This amount be paid to the respondent No.1 as jointly suggested by the counsel. This payment may be appropriated towards the ultimate recovery which the respondent No.1 has to make against Debonair Phamaceuticals.

(Akil Kureshi, J.)
(vjn)